

STATE OF MICHIGAN  
COURT OF APPEALS

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JOHNY BROWN,

Petitioner-Appellee,

v

STATE EMPLOYEES RETIREMENT BOARD,

Respondent-Appellant.

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UNPUBLISHED  
February 18, 2003

No. 232973  
Branch Circuit Court  
LC No. 00-006434-AA

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Respondent appeals by leave granted from a circuit court order reversing the denial of petitioner’s application for nonduty disability retirement benefits. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A final agency decision is subject to court review and must be upheld if it is not contrary to law; not arbitrary, capricious, or a clear abuse of discretion; and is supported by competent, material and substantial evidence on the whole record. Const 1963, art 6, § 28; MCL 24.306(1)(d). “Substantial evidence is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence.” *St Clair Intermediate Sch Dist v Intermediate Ed Ass’n/Michigan Ed Ass’n*, 218 Mich App 734, 736; 555 NW2d 267 (1996), aff’d 458 Mich 540 (1998). This Court reviews a trial court’s review of an agency decision for clear error. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).

Under the State Employees’ Retirement Act, MCL 38.1 *et seq.*, a state employee may qualify for nonduty disability retirement. MCL 38.24. That statute provides:

Subject to the provisions of sections 33 and 34, . . . a member who has been a state employee at least 10 years [and] becomes totally and permanently incapacitated for duty as the result of causes occurring not in the performance of duty to the state, may be retired by the retirement board; Provided, The medical advisor after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, and such incapacity is likely to be permanent and that such member should be retired.

To qualify for benefits, the employee's disability must prevent him from performing his previous job or any other employment reasonably related to his past experience and training. *Knauss v State Employees' Retirement Sys*, 143 Mich App 644, 648-650; 372 NW2d 643 (1985).

The evidence showed that petitioner had lost the four fingers on his left hand years before his employment with the state, yet was able to perform a variety of tasks during his twenty years' employment. He was incapacitated from performing his previous jobs because residual pain from a broken ankle prevented him from remaining on his feet for long periods of time. However, petitioner was not totally incapacitated from performing work reasonably related to his past experience and training. His training and experience were not limited to a specialized field such as law or medicine. He had training and experience in a variety of duties, including record-keeping, filing, and other paperwork and those skills enabled him to perform a sedentary job in the mail room. Although petitioner could not remain on his feet for extended periods of time, he was able to get around without assistance and remain on his feet for short periods of time and thus capable of handling any minimal walking required while performing a sedentary job. Thus the evidence showed that petitioner was capable of performing a different job that was reasonably related to his past experience and training and that could accommodate his walking and lifting restrictions.

In addition, while petitioner's ankle would always be stiff, petitioner's testimony showed that the pain was the primary factor that prevented him from working and two physicians indicated that there were unexplored alternatives for controlling the pain. Thus, it was not clear that petitioner's incapacity was permanent. Therefore, respondent's decision was supported by competent, material and substantial evidence and the trial court clearly erred in reversing it.

Reversed and remanded for reinstatement of the board's decision. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray